

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

APR 3 2003

FOR THE NINTH CIRCUIT

CATHY A. CATTERSON

U.S. COURT OF APPEALS

EUGUENI BORTNIKOV,

Petitioner,

v.

IMMIGRATION AND NATURALIZATION
SERVICE,

Respondent.

No. 02-70279

INS No. A73-613-102

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted March 14, 2003**
San Francisco, California

Before: RYMER, KLEINFELD, and PAEZ, Circuit Judges.

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

Eugueni Bortnikov (Bortnikov) is a native and citizen of Russia who entered the United States on a student visa in 1994. He petitions for review of an order of the Board of Immigration Appeals (BIA) denying his application for asylum and withholding of deportation. Because deportation proceedings were commenced before April 1, 1997, and the final order was issued after October 30, 1996, we have jurisdiction pursuant to former 8 U.S.C. § 1105a(a), as amended by the transitional rules for judicial review in § 309(c)(4) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). *See Kalaw v. INS*, 133 F.3d 1147, 1149-50 (9th Cir. 1997). We deny the petition.

I

Substantial evidence supports the BIA's determination that Bortnikov failed to establish past persecution on account of his political opinion, his ethnicity, or his membership in a particular social group. The Pamyat members attacked Bortnikov solely because they believed that he possessed a criminally inculpatory videotape. Regardless of whether Bortnikov may have privately harbored an anti-Pamyat political view, there was no nexus between Bortnikov's views and the Pamyat members' decision to attack him. Likewise, the facts that Bortnikov is Jewish, that Pamyat is an anti-Semitic organization, and that Pamyat members

attacked Bortnikov are not enough, by themselves, to establish persecution on account of his being Jewish. There is no evidence that Pamyat was aware that Bortnikov is Jewish when they attacked him. Finally, regardless of whether Russian journalists qualify as a particular social group for asylum purposes, Bortnikov was not targeted by Pamyat *because of* his status as a Russian journalist. *See Florez-de Solis v. INS*, 796 F.2d 330, 335 (9th Cir. 1986); *Desir v. Ilchert*, 840 F.2d 723, 727 (9th Cir. 1988).

II

Assuming that the argument is not waived, the evidence also does not compel the conclusion that Bortnikov has a well-founded fear of future persecution on account of his political opinion, his ethnicity, or his membership in a particular social group. There is no evidence that Pamyat has imputed a political opinion to Bortnikov since he left Russia. Pamyat members have made threatening phone calls to Bortnikov's family, but these calls have all focused on the videotape, and the one passing reference to Bortnikov's being Jewish was interpreted by Bortnikov's sister to be related to the videotape. Russian journalists are too large and diverse a collection of individuals to qualify as a "particular social group," *Sanchez-Trujillo v. INS*, 801 F.2d 1571, 1576-77 (9th Cir. 1986);

De Valle v. INS, 901 F.2d 787, 792-93 (9th Cir. 1990), and in any event there is no indication that Russian journalists as such are targeted by Pamyat, or anyone else.

III

Having failed to satisfy the lower standard of proof to establish eligibility for asylum, Bortnikov necessarily cannot show eligibility for withholding of deportation. *Kazlauskas v. INS*, 46 F.3d 902, 907 (9th Cir. 1995).

PETITION DENIED.